THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

LIGHTSIDE TECHNOLOGIES, LLC, Plaintiff, v. VIZIO, INC., Defendant.	Case No. 2:16-CV-01250-JRG-RSP Honorable Rodney Gilstrap Jury Trial Demanded

DEFENDANT VIZIO, INC.'S MOTION TO DISMISS FOR IMPROPER VENUE

Pursuant to Federal Rule of Civil Procedure 12(b)(3), Defendant VIZIO, Inc. ("VIZIO") hereby moves to dismiss the complaint filed by Plaintiff Lightside Technologies, LLC ("Lightside"), ECF No. 1 ("Complaint" or "Compl."), for improper venue.[1]

I. INTRODUCTION

Venue in patent cases is governed by 28 U.S.C. § 1400(b), which states that "[a]ny civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business." Last week, the Supreme Court issued its decision in *TC Heartland LLC v. Kraft Foods Group Brands LLC*, holding that the term "resides" in § 1400(b) "refers only to the State of incorporation." 2017 WL 2216934 at *1, 581 U.S. __ (May 22, 2017).

VIZIO is incorporated in California. Thus, consistent with *TC Heartland*, it does not "reside" in this District. Further, VIZIO lacks any "regular and established place of business" in the Eastern District of Texas. Indeed, VIZIO has no facilities, employees, or other physical presence in this District. Lightside did not even bother to plead as much in its Complaint. As such, this case must be dismissed under 28 U.S.C. § 1406(a).

II. FACTUAL BACKGROUND

VIZIO is a California corporation that sells televisions and other consumer electronics. It is headquartered in Irvine, California, and incorporated under the laws of California. Decl. of Rex Hwang in Support of VIZIO's Motion to Dismiss, Exhibit A (Decl. of Rob Brinkman in Support of VIZIO's Motion to Transfer Venue, ECF No. 15-2 ("Brinkman Decl.")), at ¶ 3. Lightside acknowledges this in its Complaint. Compl. at ¶ 3.

---

[1] VIZIO expressly reserved its right to bring this motion to dismiss for improper venue in its Answer. *See* ECF No. 20 at ¶ 66.

VIZIO does not maintain any facilities in the Eastern District of Texas. Brinkman Decl. at ¶ 6. Rather, the accused products are developed in California and assembled overseas. *Id.* at ¶ 5. Independent retailers, not VIZIO, then sell the accused products throughout the United States. *Id.* VIZIO has no employees or other physical presence in Texas. *Id.* at ¶ 6.

III. THIS LAWSUIT MUST BE DISMISSED BECAUSE LIGHTSIDE FILED SUIT IN AN IMPROPER VENUE

Under Section 1400(b), "Any civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business." 28 U.S.C. § 1400(b). And if a lawsuit is brought in an improper venue, then a district court "shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." 28 U.S.C. § 1406(a) (emphasis added). Based on these two statutory provisions, as well as the Supreme Court's recent decision in *TC Heartland*, this case must be dismissed (or transferred) as requested by VIZIO.[2]

A. VIZIO Is Not a Resident of this District

The Supreme Court recently held "that a domestic corporation 'resides' only in its State of incorporation for purposes of the patent venue statute." *TC Heartland*, 2017 WL 2216934 at *3. VIZIO is incorporated in California. Compl. at ¶ 3. Thus, VIZIO is not a resident of this District under Section 1400(b).

B. VIZIO Lacks a Regular and Established Place of Business in this District

As set forth above, VIZIO does not maintain a regular and establish place of business in the Eastern District of Texas. In fact, Lightside's Complaint merely alleges that VIZIO "has transacted business in this District and has committed acts of patent infringement in this District" to try and establish venue. Compl. at ¶ 5. But Lightside "bears the burden of proving both acts of infringement and a regular place of business in order to establish proper venue." *Med. Designs, Inc. v. Orthopedic Tech., Inc.*, 684 F. Supp. 445, 446 (N.D. Tex. 1988). And Lightside's bare-boned allegation relating to venue is woefully insufficient to establish that VIZIO has committed any acts of infringement in this District, or that it has a regular and established place of business in this District. *See, e.g., Kay v. JFD Mfg. Co.*, 261 F.2d 95, 96 (5th Cir. 1958) (finding that New York manufacturer corporation did not have regular and established place of business in Georgia where corporation's only presence was a sales agent who forwarded orders to the corporation, and products were delivered from the corporation to customers in Georgia); *Grantham v. Challenge-Cook Bros., Inc.*, 420 F.2d 1182, 1185 (7th Cir. 1969) (finding that California manufacturer corporation did not have regular and established place of business in Illinois, even though corporation contracted with a nonexclusive distributor in Illinois to make sales in that state); *Knapp-Monarch Co. v. Casco Prods. Corp.*, 342 F.2d 622 (7th Cir. 1965) (finding that New York manufacturer corporation did not have a regular and established place of business in Illinois, even though it made sales through dealers, had a bank account, and participated in trade shows in Illinois); *Johnston v. IVAC Corp.*, 681 F. Supp. 959, 964 (D. Mass. 1987) (finding that California manufacturer corporation did not have a regular and established place of business in Massachusetts even though its sales representatives there forwarded orders to the corporation, where the corporation delivered goods to customers in Massachusetts).

---

[2] VIZIO filed its Motion to Transfer Venue on January 18, 2017, which is currently pending. *See* ECF No. 15.

Further, Lightside cannot amend its Complaint to try and establish venue because all of the relevant facts go against Lightside. Again, VIZIO is headquartered and incorporated in

California. Brinkman Decl. at ¶ 3. The accused products are developed in California and assembled overseas. *Id.* at ¶ 5. VIZIO has no employees in Texas. *Id.* at ¶ 6. It has no facilities or other physical presence in Texas. *Id.* None of its employees live in or regularly travel to Texas. *Id*. Independent retailers, not VIZIO, sell the accused products in this District. *Id.* at ¶ 5. Simply put, VIZIO has no relevant presence in Texas.

IV. CONCLUSION

For the foregoing reasons, VIZIO respectfully requests the Court dismiss this lawsuit for improper venue under Federal Rule of Civil Procedure 12(b)(3) and § 1406(a).

DATED: May 26, 2017

By: /s/ Rex Hwang
Adrian M. Pruetz
apruetz@glaserweil.com
Rex Hwang
rhwang@glaserweil.com
Christopher Dugger
cdugger@glaserweil.com
GLASER WEIL FINK HOWARD
AVCHEN & SHAPIRO LLP
10250 Constellation Blvd., 19th Floor
Los Angeles, CA 90067
Phone: (310) 553-3000
Fax: (310) 556-2920

Counsel for Defendant VIZIO, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5 on May 26, 2017. Any other counsel of record will be served by First Class U.S. Mail on this same date.

/s/ Rex Hwang
Rex Hwang